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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

10 CENTURY SURETY COMPANY,
11 Plaintiff,
12 vs.
13 CAL-REGENT INSURANCE
14 SERVICES CORPORATION and
STATE NATIONAL INSURANCE
COMPANY, INC.,
15 Defendants.

CASE NO. 13cv1488 JM(JMA)
ORDER DENYING MOTION TO
STAY

16 Defendant Cal-Regent Insurance Services Corporation (“Cal-Regent”) moves to
17 stay this action pending resolution of a related arbitration on-going in Phoenix,
18 Arizona. Defendant State National Insurance Company, Inc. (“State National”) does
19 not oppose the motion. (Ct. Dkt. 34). Plaintiff Century Surety Company (“Century”)
20 opposes the motion. Pursuant to Local Rule 7.1, the matters presented are
21 appropriately resolved without oral argument. For the reasons set forth below, the
22 court denies the motion to stay.

BACKGROUND

24 || The Complaint

25 On June 27, 2013, Century commenced this diversity action for rescission and
26 declaratory relief. “Cal-Regent provides insurance-related services and, at all relevant
27 times, acted as a managing general agent for State National, including with respect to
28 the issuance of liability insurance policies underwritten by State National and the

1 handling of claims arising under those policies.” (Compl. ¶6). On May 25, 2011, Cal-
 2 Regent submitted to Century an Application for Agents and Brokers Errors and
 3 Omissions Insurance (the “Application”) to obtain insurance covering potential errors
 4 or omissions arising in the course of Cal-Regent’s business as a managing general
 5 agent. (Compl. ¶7). Based upon representations by Cal-Regent in the Application,
 6 (Compl. Exh. B), Century issued Commercial Lines Policy CCP 707046 (the “Policy”)
 7 to Cal-Regent for the policy period of June 22, 2011 to June 22, 2012. (Compl. ¶10).
 8 One provision in the Application represented, in effect, that Cal-Regent was unaware
 9 of any fact, circumstance, situation, incident, or allegation “which might afford grounds
 10 for any claim such as would fall under the proposed insurance.” (Compl. ¶8). At the
 11 heart of Century’s complaint is the allegation that the Application contains material
 12 misrepresentations.

13 In the Complaint, Century seeks a declaration that it has no obligation to defend
 14 or indemnify Cal-Regent in connection with State National’s indemnity claims in the
 15 Arizona arbitration proceeding. Century also seeks to rescind the Policy based upon
 16 the alleged misrepresentations contained in the Application.

17 The Underlying Claim and the Bad Faith Action

18 On December 30, 2010, a bad faith lawsuit was filed against State National in
 19 the Superior Court for Maricopa County, Arizona (the “Bad Faith Action”). The Bad
 20 Faith Action arose out of a single-vehicle accident that occurred in Sonora, Mexico on
 21 February 9, 2007. A passenger in the vehicle, Brian Walderson, was seriously injured.
 22 Walderson and his parents (the “Waldersons”) sued the owner of the vehicle, Sullivan
 23 Car Company, and the driver, Heath Sullivan (the “Sullivans”), for Brian’s injuries.

24 The Sullivans sought coverage for the claims asserted under an insurance policy
 25 issued to Sullivan Car Company by State National through its managing general agent,
 26 Cal-Regent. (Compl. ¶14). Notice of the Waldersons’ claim was provided to State
 27 National, Cal-Regent, and Vista Claims Services (“Vista”), the agent handling claims
 28 for policies issued by State National and Cal-Regent. Defendants denied coverage

1 because the policy purported to exclude coverage for accidents occurring outside the
2 United States. The following is the pertinent provision:

3 **B. General Conditions**

4 **7. Policy Period, Coverage Territory**

5 **Under this Coverage Form, we cover:**

6 **a. "Bodily injury", "property damage" and "losses" occurring; and**

7 **b. "Covered pollution costs or expense" arising out of "accidents" occurring
8 during the policy period shown in the Declarations and within the coverage
9 territory.**

10 **The coverage territory is:**

11 **The United States of America**

12 (Exh.). The parties generally agree that this provision was formatted in such a manner
13 that the coverage territory could be interpreted to mean that the policy actually applied
14 to bodily injuries occurring anywhere in the world, but not to pollution costs or
15 expenses which were limited to the United States. (Reply at p. 2:27-3:7; Oppo. at 1:27
16 - 2:2).

17 After State National issued a denial letter, the Sullivans demanded the \$1 million
18 policy limit and advised State National that if the policy limits were not tendered, the
19 Waldersons and the Sullivans intended to settle their dispute, including a stipulated
20 judgment not to execute in favor of the Sullivans as permitted by Arizona state law.
21 (Compl. ¶16). In response to the demand letter, Vista Claims (the third party claims
22 administrator hired by Cal-Rent) retained counsel who opined that the Sullivan policy
23 did not provide coverage for Waldersons's claims because the accident occurred
24 outside the coverage territory. Cal-Regent acknowledges that it knew of the accident
25 before completing the Application for insurance. (Reply at p.2:27-28:7). Cal-Regent
26 agreed that the policy did not provide coverage for the Waldersons' claim.

27 On December 29, 2009, the Sullivans stipulated to judgment in the amount of
28 \$30 million and assigned all their rights to the Waldersons. The Waldersons agreed not

1 to execute on the stipulated judgment and, on December 30, 2010, the Waldersons filed
 2 the Bad Faith Action against State National and Vista Claims. Ultimately, in March
 3 2013, State National and Vista Claims entered into a \$4 million settlement with the
 4 Waldersons.¹

5 The Arbitration

6 In 2013, State National brought an indemnity claim against Cal-Regent in a
 7 Phoenix arbitration proceeding. State National seeks to recover the \$4 million
 8 settlement of the Waldersons' claim based upon the formatting issue discussed above.
 9 Cal-Regent tendered the claim to Century. Century continues to pay Cal-Regent's
 10 defense costs in the arbitration proceeding.

11 **DISCUSSION**

12 Cal-Regent moves to stay this action because of its view that this case turns on
 13 facts to be litigated in the Arizona indemnity arbitration proceeding. A stay of an
 14 action is an extraordinary remedy. See Landis v. North American Co., 299 U.S. 248,
 15 254 (1936). "To eliminate the risk of inconsistent factual determinations that could
 16 prejudice the insured, a stay of the declaratory relief action pending resolution of the
 17 third party suit is appropriate when the coverage question turns on facts to be litigated
 18 in the underlying action." Montrose Chemical Corp. v. Superior Court, 6 Cal.4th 287,
 19 301 (1993). A stay is appropriate, for example, where a third party seeks damages on
 20 account of the insured's negligence and the insurer seeks declaratory relief by arguing
 21 that the insured harmed the third party by non-insured intentional conduct. This is the
 22 classic example where "the insurer's proof will prejudice its insured in the underlying
 23 litigation." Id. at 302. However, as explained by the California Supreme Court, "when
 24 the coverage question is logically unrelated to the issues or consequence in the
 25 underlying case, the declaratory relief action may properly proceed to judgment."

26 In discussing the different types of prejudice that may arise when an insurer

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 28 ¹ On April 19, 2012, Cal-Regent first provided notice to Century of
 circumstances that might result in a claim against Cal-Regent in connection with the
 Bad Faith Action. (Compl. ¶19).

1 seeks declaratory relief while an indemnity action is pending, the California Court of
 2 Appeal noted that prejudice may arise where the insurer “join[s] forces with the
 3 plaintiffs in the underlying actions as a means to defeat coverage,” the insured is
 4 required to litigate in two different forums, or there exists the potential for collateral
 5 estoppel effect where a factual determination in one action will bind the parties to the
 6 same determination in the other action. Montrose Chemical Corp. v. Superior Court,
 7 25 Cal.App.4th 902, 909-10 (1994). The Court of Appeal highlighted that any
 8 determination to stay an action requires an analysis of the circumstances underpinning
 9 the third party action and the declaratory relief action. The determination must
 10 consider basic insurance principles: “As the Supreme Court has explained, (1) since the
 11 duty to defend is broader than the duty to indemnify and (2) since an insurer may owe
 12 a duty to defend in an action in which coverage is in doubt and ultimately does not
 13 develop, it follows that (3) the duty to defend is a continuing one which arises on the
 14 tender of defense and (4) lasts until (a) the underlying lawsuit is resolved or (b) the
 15 coverage issue can be determined without prejudice to the insured.” Id. at 909 (quoting
 16 Montrose, 6 Cal.4th at 295).

17 The court concludes that Cal-Regent fails to show cognizable prejudice and
 18 therefore, a stay of this action is not appropriate under the circumstances. Cal-Regent
 19 argues that the coverage issue “necessarily turn[s] on the resolution of facts in the
 20 Phoenix Arbitration.” (Motion at p.8:12-13). Without explaining how that is so, Cal-
 21 Regent argues that it was not a named defendant in the Waldersons bad-faith claim
 22 against State National, State National was “fully involved” in the decision to deny
 23 coverage, and State National was aware of the “formatting issue” and chose to deny
 24 coverage. According to Cal-Regent, the issue in this action and the Phoenix arbitration
 25 is whether State National “will deny [] involvement in the Walderson coverage
 26 determination . . . [and] knowledge of [the] formatting issue relating to the coverage
 27 territory provision.

28 The court concludes that the issue in this case is relatively straight forward:

1 whether Cal-Regent, at the time of submitting the Application for insurance on May
2 25, 2011, after comprehensive inquiry, was “aware of any fact, circumstance, situation,
3 incident or allegation of negligence or wrongdoing, which might afford grounds for any
4 claim such as would fall under the proposed insurance.” (Compl. ¶8). Whether Cal-
5 Regent was aware of a potential claim within the meaning of the Application is a
6 separate and distinct issue from whether State National is entitled to indemnity from
7 Cal-Regent for the \$4 million settlement. Regardless of the court’s determinations
8 related to the alleged misrepresentations in the Application, the validity of the
9 underlying Policy is not one of those determinations. Interpretation and construction
10 of the Policy, and the potential formatting issue identified by the parties, is not an issue
11 before this court.

12 In response, Cal-Regent explains that it was a program underwriter for the State
13 National policy, that it retained Vista Claims to administer claims under the State
14 National policy, and that Vista Claims acted as State National’s agent, and not as Cal-
15 Regent’s agent. (Reply at p. 23-25). The court rejects these arguments as bearing on
16 the issue of cognizable prejudice within the meaning of Montrose. While Cal-Regent
17 is involved in an arbitration proceeding in Arizona and this litigation in California, the
18 court notes that litigation involving insurers or their agents in multiple forums is a
19 common occurrence and therefore fails to demonstrate cognizable prejudice.

20 In sum, the court denies the motion to stay.

21 **IT IS SO ORDERED.**

22 DATED: July 16, 2014



23
24 Hon. Jeffrey T. Miller
United States District Judge

25 cc: All parties

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